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CERTIFIED MAIL

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of MEGA RV CORP. dba MCMAHON'S RV, Protestant, v. ROADTREK MOTORHOMES, INC., Respondent.	**Protest No. PR-2199-10** **PROPOSED DECISION** **Vehicle Code section 3070(b)** **[Modification – Colton]**

PROCEDURAL BACKGROUND

Parties and Counsel

1. Protestant Mega RV Corp doing business as McMahon's RV (herein "Mega RV" or "Protestant") is a recreational vehicle dealership, with several California and Arizona locations. Until early 2012, its primary dealership location was in Irvine, California at 6441 Burt Road, #10; on or about March 31, 2012, Protestant relocated that dealership to 5400 Garden Grove Boulevard, Westminster, California.

2. Mega RV is a California corporation owned by Brent McMahon. Mega RV is a

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"franchisee" within the meaning of Vehicle Code section 331.1.[1]

3. Protestant is represented by the Law Offices of Michael J. Flanagan, by Michael J. Flanagan, Esquire; Gavin M. Hughes, Esquire; Erin R. Hegedus McIntosh, Esquire; and Danielle R. Vare, Esquire (as of 11/21/11), 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California.

4. Respondent Roadtrek Motorhomes, Inc. (herein "Roadtrek" or "Respondent") manufactures Class B motorhomes. It is located in Kitchener, Ontario, Canada.

5. Roadtrek is a Canadian corporation. Roadtrek is a "franchisor" within the meaning of Section 331.2.

6. Respondent is represented by Seyfarth Shaw, LLP, by Louis S. Chronowski, Esquire; and Kavitha Janardhan, Esquire (until 5/1/12), 131 South Dearborn Street, Suite 2400, Chicago, Illinois.

Preliminary Procedural Note

7. Between January and July of 2010, Mega RV filed with the New Motor Vehicle Board ("Board") 18 protests alleging violations of the Vehicle Code by Respondent Roadtrek involving Mega RV's dealership locations in Irvine, Colton, Scotts Valley and Palm Desert. By the first day of the hearing in August 2011, 12 protests had been consolidated for hearing, and six protests had been dismissed.

8. Also in 2010, Mega RV filed with the Board two petitions (Petition Nos. P-456-10 and P-457-10) against Roadtrek. Both petitions were rejected upon first consideration and the portions of the petitions that sought adjudication of the dispute pursuant to Section 3050(c)(2) were dismissed by the Board at the June 15, 2010, and December 3, 2010, General Meetings, respectively. The petitions also requested that the Board direct the Department of Motor Vehicles (hereinafter "DMV") to conduct an investigation of the allegations contained in the petitions and to order DMV to exercise any and all authority over Respondent's Occupational License. These requests were also denied at the meetings noted above.

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[1] Hereinafter, unless otherwise indicated, all Section references are to the Vehicle Code. The statutory references are subject to some qualification: although the parties are properly identified as "franchisee" and "franchisor" under Sections 331.1 and 331.2, it was only as of January 1, 2009 that Section 331.3 ("recreational vehicle franchise"), as well as Sections 11713.22 and 11713.23 ("written [RV] franchise agreement" and "sale of new [RV]") were enacted. Section 3072 ("establishing or relocating RV dealerships") became effective January 1, 2004.

9. On January 31, 2012, the September 20, 2010 order of consolidation for purposes of the merits hearing was amended for preparation of the Proposed Decisions and Decision by the Board; the new order consolidated the 12 protests into five groups, as follows:

Vehicle Code	Type of Protest	Filed	Protest Nos.
Section 3070(b)	Modification	January 29, 2010 January 29, 2010 January 29, 2010	PR-2198-10 (Scotts Valley) [2] PR-2199-10 (Colton) PR-2201-10 (Irvine)
Section 3075	Warranty reimbursement violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2206-10 (Colton) PR-2208-10 (Irvine) PR-2209-10 (Scotts Valley)
Section 3076	Franchisor incentive program violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2205-10 (Colton) PR-2211-10 (Scotts Valley) PR-2212-10 (Irvine)
Section 3072(a)	Establishment violations	May 11, 2010	PR-2233-10 (Colton)
Section 3070(a)	"*De facto* termination"	July 13, 2010 July 13, 2010	PR-2244-10 (Colton/Irvine) PR-2245-10 (Scotts Valley)

10. A hearing on the merits of the 12 protests was held before Administrative Law Judge Diana Woodward Hagle on the following dates in 2011: August 9 through 12, inclusive; August 15 through 19, inclusive; September 21 through 23, inclusive; September 30; November 7 through 11, inclusive; November 14 and 15; November 17 and 18; and November 28 through December 2, inclusive. Hearing dates in 2012 were the following: January 9 and 10; January 12 and 13; January 18 and 19; January 31; and February 1.

11. The hearing was re-opened for a telephonic hearing on April 26, 2012 to provide evidence of the relocation of Mega RV's primary dealership location from Irvine to Westminster.

12. The matters were submitted on May 3, 2012.[3]

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[2] Subsequently, Protestant requested dismissal of Protest PR-2198-10, which was ordered on March 6, 2012.

[3] In October 2010, counsel for the parties stipulated to extend the time the ALJ has to render the proposed decisions from 30 to 60 days after the matters were deemed submitted; the time for the Board to consider the proposed decisions was also extended from 30 to 60 days from the date the ALJ submits the proposed decisions. On May 29, 2012, counsel stipulated to extend the ALJ's time to final and sign the proposed decisions from 60 days to 90 days, or August 1, 2012.

Pendant Federal Case

13. The parties to these protests are also parties to an action for money damages currently pending in United States District Court in the Central District of California, Case No. CV 09-09466 SJO. The federal proceeding is stayed pending the Board's Decision in these protests. (RT 9/21: 36-37)[4]

Statement of the Case

Background

14. On January 29, 2010, Roadtrek executed a franchise agreement with a recreational vehicle[5] dealer other than Mega RV to sell and service Roadtrek motorhomes at dealership locations which Mega RV alleged were within Mega RV's "exclusive" territories, as more particularly described below.

Modification Protest No. PR-2199-10 - Colton Dealership Location

15. On January 29, 2010, Mega RV filed Protest No. PR-2199-10 with the Board. The protest alleged that Roadtrek had violated Section 3070(b) by modifying Mega RV's Colton, California franchise by establishing another franchisee, Mike Thompson's Recreational Vehicles, dba Mike Thompsons RV Superstores ("MTRV"), in the "exclusive sales area" it had previously assigned to Mega RV (i.e., within a 60-mile radius of the dealership). MTRV's Colton dealership is directly across the street from Mega RV's dealership: they are the only tenants in the "Colton RV Expo". (RT 11/15:177; 1/13:17, 44, 66-67)

16. No written notice was given by Roadtrek to Mega RV or the Board pursuant to Section 3070(b).

Vehicle Code Section 3070(b) - Modification of a Franchise

17. Section 3070(b) provides that a franchisor of a dealer of RVs may not modify a franchise if the "modification" would "...substantially affect the franchisee's sales or service obligations or investment..." unless the franchisor has given written notice to "...each affected franchisee...".

Pre-Hearing Order Relative to Adjudication of Issues

18. On August 3, 2011, Presiding ALJ Skrocki issued an Order Granting in Part and Denying in Part Protestant's Motions in Limine.

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[4] References herein to "RT" followed by a date (excluding the year) are to the transcripts of the proceedings. References to "Exh" are to Exhibits.

[5] Hereinafter, recreational vehicles will sometimes be referred to as "RVs".

19. Among other issues, the order discussed Mega RV's motion[6] for an order dispensing with a hearing regarding the "good cause" factors in Section 3071.

20. ALJ Skrocki did rule that no Section 3071 hearing be held. The substance of the Order is the following:

> ...Evidence as to these issues will be limited to whether the establishments of the additional franchises in Colton and Irvine were within the contractually assigned territories of Protestant, and if so whether they resulted in modification of Protestant's franchises and come within the language of Section 3070(b)(1) which reads in part as follows:
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> > (b)(1) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. ...
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> If the establishment of the additional franchises in the exclusive territories of Protestant do not constitute a modification of Protestant's franchises, or even if they do constitute modifications, if they are such that they do not substantially affect Protestant's sales or service obligations or investment, then Section 3070(b)(1) does not require there be notice of the modifications to Protestant or the Board. If this is the case, then there is no right to protest the claimed modifications and there is no right to a hearing on the merits of the protests that have been filed. Said another way: (a) If there is no modification of the franchise, Respondent is not required to give notice of what is a "non-modification" and there is no right to protest; (b) If there is a modification, but the modification will not substantially affect the Protestant's sales or service obligations or investment, Respondent is not required to give notice of the modification and there is no right to protest.
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> However, if the establishment of the additional franchises was within the exclusive territories of Protestant and do constitute modifications of Protestant's franchises and if these are modifications that substantially affect Protestant's sales or service obligations or investment then Section 3070(b)(1) does require notice to Protestant and the Board. If no such notice was given, the modifications are deemed ineffective (void) as a matter of law and there should be no requirement that a hearing be held to provide an opportunity for Respondent to show that there was good cause for the modifications, which in these cases would have the effect of depriving Protestant of its exclusive territories.
>
> The burden of going forward and the burden of proof as to whether there are (a) modifications to Protestant's franchises, and (b) that these are modifications which substantially affect Protestant's sales or service obligations or investment are upon Protestant.
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> Respondent's assertion that there is no modification as Protestant no longer has a right to the exclusive territories as it is no longer in good standing is also a question of fact that, if asserted by Respondent at the hearing, will have to be resolved as it relates directly to the issue as to whether there was a modification of the franchises.

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[6] In its motion, Protestant also correctly noted that a determination of damages is to be reserved for the federal court.

As to these specific facts and issues that the provisions regarding exclusive territories no longer existed, the burden of going forward and the burden of proof shall be allocated to Respondent. (Although this is a "claim" by Respondent it is a factual claim, not a legal claim for which a remedy is sought. It is merely an assertion by Respondent that no notice was needed pursuant to Section 3070 as there was no modification of the franchise. Thus, the issue is still limited to whether there was or was not a modification of the franchise which is within the jurisdiction of the Board as the only relief being sought is pursuant to Section 3070.

With regards to the modification protests, the only issues that need be addressed at the upcoming merits hearing are:

A. Was there a modification of the franchises (which includes whether the exclusive territory provision was no longer applicable due to the assertion by Respondent that Protestant was no longer in good standing); and, if there was a modification,

b. Whether the modification substantially affects Protestant's sales or service obligations or investment.

If Protestant cannot meet its burden of proof as to these fundamental issues, there is no right to file a protest and no need for Respondent to prove there is good cause for the claimed modifications.

If Protestant does meet its burden of proof as to these fundamental issues, and if there was no notice from Respondent that satisfied the requirements of Section 3070, the claimed modifications were done in derogation of the statutes and are of no effect. The analysis stated as to Motion No. 1 would be applicable here.

...[R]egardless of which of the conclusions are made here, there is no need for a hearing to address the good cause factors as stated in Section 3071.

ISSUES PRESENTED

21. Did Roadtrek sustain its burden of proof of establishing that Mega RV had no franchise right to an exclusive territory since (as Roadtrek alleges) Mega RV was no longer in "good standing" under the Roadtrek franchise agreement?

22. If Roadtrek fails to sustain its burden of proof stated above, did Mega RV sustain its burden of proof of showing that Roadtrek's establishment of an additional Roadtrek franchise within Mega RV's "contractually assigned exclusive territory" was a "modification" of Mega RV's Colton franchise?

23. If Mega RV sustained its burden of proof that its franchise was "modified" by the establishment of an additional Roadtrek franchise, did Mega RV sustain its burden of proof of showing that the "modification" substantially affected Mega RV's sales or service obligations or investment?

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PROTESTANT'S CONTENTION

24. Roadtrek's establishment of additional Roadtrek franchisees within Mega RV's "contractually assigned exclusive territories" were "modifications" of Mega RV's franchise which substantially affected Mega RV's sales or service obligations or investment. If this is found to be so, Roadtrek violated Section 3070(b) by failing to give notice to Mega RV and the Board of the intended additional franchise.

RESPONDENT'S CONTENTION

25. There was no modification since Mega RV no longer has a franchise right to the exclusive territories as Mega RV was no longer in "good standing" under the Dealer Agreement. Therefore, Roadtrek was under no statutory obligation to give notice to Mega RV of its establishment of an additional Roadtrek franchise.

IDENTIFICATION OF WITNESSES AND EXHIBITS

Protestant's Witnesses

26. Brent McMahon is the president and CEO of Mega RV Corp, doing business as McMahon's RV. (RT 8/9: 76-173; 8/10: 14-244; 8/11: 6-267; 8/12: 7-249; 8/15: 6-205; 8/16: 6-124)

27. Paul Schilperoort is the Director of Operations at Mega RV, a position he has held since mid-2008. His duties include overseeing the "...daily operations of the entire company, which entail service and parts, the sales operations, and the accounting office". He initially was hired in November 2005 as service and parts director. (RT 8/16:127-220; 8/17:117-218; 8/18:6-215; 8/19:8-211; 9/21:9-190; 9/22: 6-71; 1/31:207-226; 2/1:6-144; 4/26:30-100)

28. Frank De Gelas[7] is the President of Mike Thompson's RV Super Stores, which operates RV dealerships in five locations in Southern California, including Colton, California.[8] (RT 1/13:7-77)

Respondent's Witnesses

29. Jeff Hanemaayer is the son of the founder of Roadtrek. Until 2009, he was Chairman of the company, handling marketing, finance and accounting. He described himself and James Hammill

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[7] Frank De Gelas was called as an adverse witness under Evidence Code section 776.

[8] MTRV has three year-round locations in Southern California and one temporary location. The Fountain Valley location has an address on both sides of the freeway and is counted as two locations. (RT 1/13: 8)

"...more as co-CEO's...", each involved in different areas of the company. (Exh 601; RT 11/14:11-249; 11/15:6-166)

30. James Hammill is President and CEO of Roadtrek. He was initially hired as General Manager in April 2005. He was appointed President around the beginning of 2007 and was named a Director of the company in 2008. He oversees "...all operations, everything tangible about the company, reporting to the board of directors... sales, manufacturing, engineering, quality, materials, purchasing... [e]ssentially all departments." (RT 9/22: 73-242; 9/23:6-220; 11/7:8-217; 11/8:9-187; 11/9:6-225; 11/10: 6-208; 11/11:6-93)

Exhibits

31. Exhibit 600 is the Dealer Agreement between the parties which was executed on February 22, 2006. It establishes Roadtrek franchisees at Mega RV's Irvine and Colton dealership locations.

32. Exhibit 685 is the Roadtrek Motorhomes, Inc. Dealer Agreement with MTRV which was executed on January 29, 2010. It establishes Roadtrek franchisees at MTRV's dealership locations in Santa Fe Springs, Fountain Valley (two locations), and Colton (directly across the street from Mega RV's dealership).

FINDINGS OF FACT[9]

Preliminary Findings

33. Roadtrek is a Class B motorhome manufacturer headquartered in Kitchener, Ontario, Canada. (RT 11/14:12-13) The company, founded by Jacques Hanemaayer, was previously known as Home & Park Motorhomes. (RT 11/14:12-15; 1/10:148-149)

34. Brent McMahon, the owner of Mega RV, started in the recreational vehicle business working with his stepfather, who owned a dealership (and who also sold Roadtrek RVs) at TraveLand, which once was a large multi-dealer RV park in Irvine, California. On December 1, 2000, Brent McMahon incorporated Mega RV Corp and started his own small dealership selling used RV's on one of the TraveLand lots. On April 9, 2001, he established Mega RV as a new recreational vehicle dealer. (Exh 1; RT 11/15: 177; 1/13: 66-67)

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[9] References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding and are not intended to be all-inclusive.

35. On February 22, 2006, Roadtrek and Mega RV entered into a Dealer Agreement covering Mega RV's Irvine, Colton and Stanton dealership locations. (Exh 600) The agreement was for a three-year period, and the parties contemplated that the agreement would be renewed. (Exh 600, Section 520)

36. As indicated above, on January 29, 2010, Respondent Roadtrek executed a Dealer Agreement[10] with MTRV to sell and service Roadtrek motorhomes. Frank De Gelas, President/Secretary of MTRV signed on behalf of the dealership and James Hammill signed on behalf of Roadtrek. The Dealer Agreement created a franchisee-franchisor relationship in which there were four MTRV dealership locations from which Roadtrek motorhomes would be sold and serviced: Santa Fe Springs (the "head office"), Fountain Valley (two locations), and Colton, California. (Exh 685; RT 4/26:18-19)

Findings Related to Mega RV's Claim to "Exclusive" Territories as a Roadtrek Franchisee

37. The Dealer Agreement which Roadtrek and Mega RV executed on February 22, 2006 established Mega RV's Roadtrek franchise. The Dealer Agreement required Mega RV, in order "...to remain in good standing under this Agreement...", to "stock" and "prominently display" a total of 22 Roadtrek vans (four different models) at each of Mega RV's three dealership locations. (Exh 600, Section 109)

38. As long as Mega RV maintained its "good standing" status, Roadtrek guaranteed that it would not locate another dealer within a "...60 mile radii..." of each dealership location and that Mega RV would "...have the exclusive right to purchase, display and resell Roadtreks, parts and accessories in the [Dealer's] Territory...". (Exh 600, Sections 107 and 108) As long as Mega RV remained in "good standing" under the agreement, it would not only retain its "exclusive" dealer territories but would also receive full cooperation from Roadtrek "in all special promotions" (Exh 600, Sections 107, 108, 520).

39.. A "material breach" of the stocking obligation would also be "good cause" allowing Roadtrek to terminate the agreement. (Exh 600, Section 530)

40. Therefore, under the Dealer Agreement, Mega RV had an "exclusive" Roadtrek territory within a "60 mile radii" of its Colton dealership which was then (and now) located in the "Colton RV Expo". Frank De Gelas, the owner of MTRV, also had an RV dealership in the "Colton RV Expo".

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[10] The Roadtrek-MTRV Dealer Agreement (Exh 685) is a "written recreational vehicle franchise agreement" pursuant to Sections 331.3, 11713.22 and 11713.23.

Presently, MTRV and Mega RV are the only two tenants in the "Colton RV Expo" and are located directly across the street from one another. (RT 8/10:180; 11/15:177; 1/13:66-67)

41. In late 2007, the formerly robust economy ended quickly and the RV industry was hit hard. On April 3, 2008, the parties executed a Security Agreement which formalized their financial dealings. The Security Agreement did not replace or modify the Dealer Agreement, still in effect: Mega RV remained a Roadtrek franchisee, with exclusive territorial dealer rights, and Roadtrek would continue to deliver motorhomes to Mega RV. (Exh 614; RT 8/19:67; 11/14:170-173; 1/12:38-40; 1/19:113-115)

42. The Security Agreement set out the parties' agreements regarding the financial terms of the wholesale purchase of vans and included references to security interests and the passing of title upon payment. It required Mega RV to hold in trust monies received from a sale and to pay Roadtrek immediately the purchase price. It obligated Mega RV to protect inventory in its possession by maintaining insurance coverage. It contained an "acceleration clause" that "...all [of Mega RV's] indebtedness [would] become immediately due and payable" if certain financial "defaults" occurred; moreover, upon "default" by Mega RV, Roadtrek could assert "all rights and remedies of [a] secured party under the Uniform Commercial Code", including taking possession of "collateral". (Exh 614, Sections 2 - 14) It provided that Roadtrek would have "...all rights and remedies of [a] secured party under the Uniform Commercial Code...". (Exh 614, Section 14.b.)

43. In mid-2008, financial disputes between the parties began and thereafter intensified. At the 2009 Pomona RV show, held in mid-October, Roadtrek repossessed Mega RV's inventory of Roadtrek vehicles.[11] Roadtrek hired Quality Drive-Away to take the motorhomes to a storage location. (Exh 619; RT 9/22:33, 100)

44. After the Pomona RV show, Roadtrek did not deliver any new motorhomes to Mega RV. (RT 1/12: 37)

45. Thereafter, until mid-December 2009, the parties attempted to resolve their financial disputes, with no success. (Exhs 27, 664; RT 8/15:64)

46. In a December 14, 2009, email to Brent McMahon, Jeff Hanemaayer called off the

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[11] Remedies asserted by parties under the Uniform Commercial Code (UCC) are not within the Board's jurisdiction.

settlement talks. He wrote that "[w]e will need adequate assurances as defined under the UCC before completing any further transactions. Those adequate assurances must take the form of: (1) payment of out-of-trust units; (2) and for future deliveries, an irrevocable letter of credit OR a 25% deposit before production and payment by cashiers check before delivery." The email also stated that the "adequate assurances as defined under the UCC" from Mega RV must be received before Roadtrek "...[completes] any further transactions...", presumably referring to delivery of motorhomes and parts.[12] (Exh 674)

47. Brent McMahon's December 14, 2009 email response to Roadtrek's demand for adequate assurances was "Good luck". (Exh 674)

48. Mega RV did not provide adequate assurances to Roadtrek, either in the form requested or otherwise.

49. Under the UCC, Roadtrek's position is that it may consider that Mega RV's failure to provide adequate assurances of performance a repudiation of the Dealer Agreement after the passage of 30 days from the request.

50. The consequence of Mega RV's failure to provide "adequate assurances" to Roadtrek under the UCC is that Roadtrek will not deliver inventory to Mega RV. Therefore, since Mega RV was not able to order Roadtrek inventory, it failed to meet the stocking levels required by the Dealer Agreement. It was therefore not in "good standing" under the terms of the Dealer Agreement, which resulted in loss of its "exclusive territories" as a Roadtrek dealer. Mega RV no longer had "exclusive" territorial rights as a Roadtrek dealer on January 29, 2010 when Roadtrek executed a Dealer Agreement with MTRV, establishing a new franchise location across the street from Mega RV's Colton dealership.

51. Since Mega RV no longer has a franchise right to "exclusive" territories as a Roadtrek dealer because it is no longer in "good standing" under the Dealer Agreement, the establishment of MTRV as a Roadtrek franchisee in Colton did not constitute a "modification" of Mega RV's franchise.

52. Therefore, no notice was needed pursuant to Section 3070(b) as there was no "modification" of the franchise, since Mega RV no longer has a right to "exclusive" territories.

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[12] However, between 12/16/09 and 4/6/10, Roadtrek stated that it did fill sixteen invoice requests from Mega RV for parts. There is no evidence that Mega RV paid for the parts. Roadtrek's last shipment of parts to Mega RV was on 4/6/10. (Exh 496, RMI 009158)

53. Since there is no modification of Mega RV's franchise, Roadtrek is not required to give notice of what is a "non-modification" and there is no right to protest.

ANALYSIS

The Pendency of Termination Protests Nos. PR-2244-10 and PR-2245-10

54. Protest Nos. PR-2244-10 and PR-2245-10 are pending before the Board. In both, Protestant Mega RV has alleged that Respondent Roadtrek engaged in a course of conduct (culminating in its appointment of MTRV as a Roadtrek franchisee) which made it difficult, if not impossible, for Mega RV to carry out its functions as a Roadtrek franchisee, and resulted in the "*de facto*" termination of its franchise. Therefore, Protestant argues, there was not good cause to terminate the Roadtrek franchise of Mega RV for its dealerships in Colton and in Irvine.

55. The resolution of Protest No. PR-2199-10 (Colton location) may be dependent upon the Decision of the Board in termination Protest No. PR-2244-10.

56. Both Protest No. PR-2244-10 [Section 3070(a)] and Protest No. PR-2199-10 [Section 3070(b)] rely on the same facts in alleging either termination or modification of Mega RV's franchise for the Colton location. This being so, the Board's Decision in Protest No. PR-2244-10 may render Protest No. PR-2199-10 moot.

57. If the Board decides that Roadtrek has not proven good cause to terminate Mega RV's franchise and sustains Protest No. PR-2244-10, there is no reason to continue the instant protest. It would be nonsensical to require Mega RV to prove the threshold issues of Section 3070(b)(1) when it has already prevailed in the termination protest. Continuing the instant protest would be a "useless act".

58. A case becomes moot when a court decision can have no practical impact or cannot provide the parties with effective relief. (*Wilson v. L. A. County Civil Service Com.* (1952) 112 Cal.App.2d 450, *Campbell v Superior Court* (1932) 126 Cal.App. 652)

59. If, on the other hand, the Board decides that Roadtrek has proven good cause to terminate Mega RV's franchise and overrules Protest No. PR-2244-10, the instant protest is not necessarily moot. The issue of whether Roadtrek was required to give notice to Mega RV prior to "modifying" Mega RV's franchise still must be decided. That is the issue discussed herein.

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DETERMINATION OF ISSUES

60. Roadtrek has sustained its burden of proof of establishing that since Mega RV was no longer in "good standing" under the Dealer Agreement, Mega RV no longer has a franchise right to "exclusive" territories as a Roadtrek franchisee in Colton, California.

61. Therefore, there was no "modification" of Mega RV's franchise and Roadtrek was under no statutory obligation to give notice to Mega RV or the Board of its establishment of MTRV as an additional Roadtrek franchisee in Colton, California.

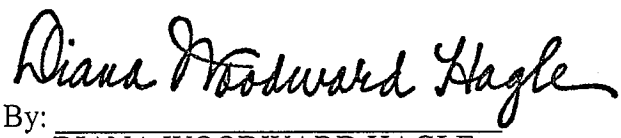
62. As there is no "modification" of Mega RV's franchise, there is no reason to reach the final issue in Section 3070(b)(1).

PROPOSED DECISION

Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT the Protest in *Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest No. PR-2199-10, is overruled. The protest is hereby dismissed with prejudice.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as the result of a hearing before me, and I recommend this Proposed Decision be adopted as the decision of the New Motor Vehicle Board.

DATED: July 30, 2012



By: _____
DIANA WOODWARD HAGLE
Administrative Law Judge

George Valverde, Director, DMV
Mary Garcia, Branch Chief,
Occupational Licensing, DMV